COMMONWEALTH OF VIRGINIA

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DIVISION OF COMMUNICATIONS

September 17, 1998

Federal Communications Commission
The Secretary
1919 M Street, N.W., Room 222 - Stop Code: 1170
Washington, D. C. 20554

RE: CC Docket No. 98-79
GTE Telephone Operating Companies
GTOC Tariff FCC No. 1
GTOC Transmittal No. 1148

Dear Sir/Madam:

Enclosed please find comments of the Virginia State Corporation Commission Staff in the above referenced case.

Very truly yours,

William Irby

William Irby
Director

WI:js
Enclosure

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List A B C D E

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 98-79
GTE Telephone Operating Companies	)	
GTOC Tariff FCC No. 1	)	
GTOC Transmittal No. 1148	)	

COMMENTS OF THE VIRGINIA STATE CORPORATION COMMISSION STAFF

Virginia State Corporation Commission
Division of Communications
1300 East Main Street
P.O. Box 1197
Richmond, Virginia 23219

September 17, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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COMMENTS OF THE

VIRGINIA STATE CORPORATION COMMISSION STAFF

Introduction

The Virginia State Corporation Commission ("VSCC") Staff, Division of Communications, respectfully submits these comments in response to the ORDER DESIGNATING ISSUES FOR INVESTIGATION, adopted and released on August 20, 1998, by the Chief, Common Carrier Bureau in CC Docket No. 98-79, and the extension order released September 3, 1998 (DA 98-1793). As directed, these comments address only the threshold issue of whether GTE's DSL Solutions – ADSL Service offering (Asymmetrical Digital Subscriber Line Service) ("ADSL") is an interstate service, properly tariffed at the federal level, or an intrastate service that should be tariffed at the state level.

General Comments

Based upon our review of the tariff material filed on behalf of the GTE Telephone Operating Companies ("GTE"), the Direct Case of GTE, and discussions held with GTE's representative via a NARUC sponsored teleconference on September 11, 1998, the VSCC Staff

concludes that GTE's ADSL service offering is an intrastate service and should be tariffed at the state level.

GTE characterizes its ADSL service offering as being "analogous to a dedicated access service and satisfies the Commission's ten percent interstate traffic threshold for federal regulation of special access services in any event." (Direct Case, p. iv). However, that cannot be correct because by definition, exchange access service is limited to "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." (Telecommunications Act of 1996 at subsection 3(a)(16)). We note at the outset of our tariff analysis that GTE purports that its ADSL service offering is for the purpose of originating and terminating Internet traffic, which is not telephone toll service. Therefore, we reject GTE's characterization of its ADSL service as an access service. For the more technical (tariff) reasons given below, we consider GTE's ADSL most analogous to an intrastate network access line or local loop.

1. ADSL service, as described by the GTE proposed tariff, is a point-to-point local connection.

Before the jurisdiction of any service can be determined, the service must be clearly defined. The jurisdictional determination must proceed from an understanding of the exact service to be provided to the end user customer. GTE's ADSL tariff defines this service as one which provides a point-to-point local connection through GTE's existing Frame Relay service.

GTE's tariff (FCC No. 1, Section 16.6(B), p. 321.28) states that:

> "ADSL Service provides a connection from the customer designated location ("CDL") to the ADSL connection point. Access from the Telephone Company's ADSL connection point will be provided via Frame Relay Service, where facilities permit. Frame Relay Service is available in Section 16.3. A customer may utilize their [sic] existing Frame Relay Service or may submit an order to establish new facilities. The associated rates and charges for Frame Relay Service will apply in addition to the rates and charges associated with the ADSL Service rate elements."

This tariff language makes it clear that customers DO NOT get "a high-speed connection between an end user and the Internet," as claimed by GTE in its Direct Case (Direct Case, p. iii). Customers do not even get a connection to an Internet Service Provider. ADSL service supplies customers with a dedicated path to a Frame Relay network, which is a separate service, available at additional charges. Frame Relay service is useful for other purposes and has been available in Virginia from GTE's intrastate tariff (General Customer Services Tariff, Section 10) since April, 1995. But, most importantly, Frame Relay is a separate service with its own prices. It is crucial to this jurisdictional determination to define carefully what service is actually being evaluated.

GTE's assertion that "ADSL-Dedicated Service Must Be Analyzed on an End-to-End Basis" (Direct Case, p. 7) is correct only if one picks the real beginning and end of the ADSL service. One end of ADSL service is a customer's premises; the other end of the service is GTE's ADSL connection point, which is a Frame Relay switch. It is most likely, because of inherent distance limitations, that these two ends will be in the same wire center area.[1] ADSL service, therefore, is most analogous to a network access line ("NAL") or local loop. It is a service that provides to customers the capability to send and receive communications to and from an existing network. Even after ADSL users connect to the Frame Relay switch, someone still has to pay for

[1] It is technologically possible to extend such proposed ADSL service through inter-office facilities but it would almost always be intrastate.

the Frame Relay service, and the end users of the ADSL service still have to pay a separate fee to an ISP to send and receive transmissions to and from the Internet. This is quite similar to (state tariffed) local exchange service, which provides a NAL to connect to the exchange switched network and requires additional payments for use of the network, either flat or usage rated.

GTE describes the nature of ADSL technology but does not consider the consequences of the fact that ADSL "allows for the simultaneous transmission of voice dialed calls and high-speed data access over a single path." (Tariff Description and Justification ("D&J") p. 1), GTE discusses only the data portion of the ADSL signal and describes it as interstate traffic (see, for example, Direct Case, p. iv). Such limited consideration ignores the fact that the voice channel contained in the ADSL signal is carrying traffic that is overwhelmingly intrastate (for GTE in Virginia, it is approximately 80% intrastate, according to Dial Equipment Minutes data in recent years) because much of the facilities used are the same as the end user's current local exchange service (Direct Case, p. 6, Footnote 14). The ADSL technology is simultaneously providing two services, local exchange and the Frame Relay access. However, only the portion associated with access to the Frame Relay switch is included in GTE's tariff and thus being considered in this proceeding. Further, the fact that GTE has chosen the name of the technology for its service offering has added to the confusion of the jurisdictional issue.

GTE's discussions of message toll service, microwave facilities, and toll-free service do not provide situations that are analogous to ADSL service. In those situations, customers are paying for services that definitely provide interstate communications, i.e., for the price of the service, customers get the capability to send and receive communications between two points that are in different states, no matter how it is accomplished. For the price of ADSL service,

however, customers get the capability to send and receive communications only between their premises and a nearby Frame Relay switch.

2. Most of the costs of ADSL service will be added to the intrastate jurisdiction.

The costs (described at pp. 5-8 of the Tariff D&J) of ADSL service will consist of investment in switching equipment and related expenses. GTE describes this investment as "Central Office Equipment Material," but by following a process of elimination, we can identify it as switching equipment. C.O. equipment consists of switching, operator systems, radio, and circuit equipment. GTE states (Tariff D&J, p. 5) that there is no circuit equipment involved, and there is obviously no operator or radio equipment involved with this service. The only category left is switching equipment. The engineering and installation labor investment should follow the equipment investment into the switching category.

The currently effective Jurisdictional Separations Procedures for switching investment (47 C.F.R. § 36.121 et seq.) will cause ADSL investment to fall into Category 3, Local Switching Equipment. Category 3 is apportioned to interstate according to the interstate Dial Equipment Minutes factor, which is approximately 20% for GTE in Virginia. This means that approximately 80% of ADSL investment and related expenses will be added to the intrastate jurisdiction in Virginia.

The jurisdictional assignment of costs should be consistent with the jurisdictional assignment of revenues. However, classification of ADSL service as interstate will cause ALL of the revenue to be assigned to the interstate jurisdiction, while approximately 80% of the costs are apportioned to the intrastate jurisdiction. In Virginia, GTE's non-competitive services are regulated on a rate-of-return basis. Thus, the jurisdictional imbalance that will result from an

interstate classification of ADSL potentially will be harmful to GTE's other ratepayers in Virginia.

3. Services now used to connect with ISPs are in state tariffs.

End-user customers today primarily use other local exchange services (i.e. "POTs" or "ISDN" lines) to reach Internet Service providers. These local exchange services provide a connection between two points in the same local calling area on a dial-up basis. Providing such a connection using the combination of ADSL and Frame Relay that GTE proposes does not change the fact that the end user customer wants that same kind of a connection (i.e., between two points in the same local calling area). Under GTE's proposal, a combination of services from an interstate tariff will be used to accomplish the same Internet connection that is presently a state-tariffed local exchange service. We note that if there is a service interruption, it will likely occur within the local calling area and the end user will look to state commissions for ultimate resolution of these service matters.

Conclusion

The VSCC Staff believes that GTE's ADSL service terminates at the Frame Relay switch. For all the reasons stated above, the interstate end-to-end analysis urged by GTE should be rejected and therefore, the ADSL service offering should be found to be intrastate.

Respectfully submitted,

By: William Irby

William Irby, Director
Division of Communications
Virginia State Corporation Commission